

GRAND TRAVERSE COUNTY APPORTIONMENT COMMISSION

Thursday, September 2, 2021

2:00 p.m.

Governmental Center
Commission Chambers, 2nd Floor
400 Boardman Ave
Traverse City, MI 49684

Apportionment Commission Website: www.gtcountymi.gov/2488

Meeting will be broadcast on Community TV Channel 191

Video Website: https://www.tacm.tv/govtv_gtcounty.asp

AGENDA:

1. Call to Order
2. Pledge of Allegiance
3. Roll Call:
 Noelle Moeggenberg, Grand Traverse County Prosecuting Attorney
 Heidi Scheppe, Grand Traverse County Treasurer
 Chris Cracchiolo, Grand Traverse County Democratic Party Chair
 Lisa Trombley, Grand Traverse County Republican Party Chair
 Bonnie Scheele, Grand Traverse County Clerk
4. Public Comment
5. Approval of August 10, 2021 Minutes 1-2
6. Legal Opinion from Attorney Lauderbach 3-7
7. Public Comment
8. Adjourn

Roll Call Vote:

Cracchilo: Yes

Moeggenberg: Yes

Scheppe: Yes

Trombley: Yes

Scheele: Yes

Motion carried.

EQUALIZATION/GIS DEPARTMENT

Mike Steffes, GIS Analyst of Grand Traverse County, spoke on the demonstration of redistricting software provided by the State of Michigan and to its capabilities.

The State will be doing a demonstration of the software on August 18th for County Clerks and Apportionment Commissions and it will be recorded so it can be shared.

DISCUSSION OF DISTRICTS

Each commission member expressed their preference and rationale for the number of county commission districts the county should be divided into.

Moved by Chris Cracchiolo, seconded by Noelle Moeggenberg to set the number of County Commission districts to nine (9) members.

Roll Call Vote:

Cracchilo: Yes

Moeggenberg: Yes

Scheppe: Yes

Trombley: Yes

Scheele: Yes

Motion carried.

PUBLIC COMMENT

Jeanine Easterday

Harold Lassers

Jeff Leonhardt

Meeting adjourned at 2:33 p.m.

Chris Cracchiolo, Democratic Party Chair

Lisa Trombley, Republican Party Chair

Noelle Moeggenberg, Prosecuting Attorney

Heidi Scheppe, County Treasurer
Vice Chairperson

Bonnie Scheele, County Clerk
Chairperson



Warner Norcross + Judd LLP

August 23, 2021

Michigan Association of County Clerks
120 N. Washington Square, Suite 110A
Lansing, Michigan 48933

Re: **Reapportionment Plan 60-Day Time Limit**

Dear Clerks:

You asked us to analyze the timeframe applicable to Michigan county clerks and apportionment commissions in developing a reapportionment plan as required by MCL 46.401 *et seq.* The Michigan Bureau of Elections has determined that the subject 60-day limit runs from the date the Bureau furnishes the counties with the needed census data, and *not* the date the information is published by the federal government. The Michigan Association of County Clerks (the “Clerks”), though, is concerned that the 60-day limit runs from the date census information was published. We believe, based on our reading of the relevant statutes that the Clerks’ interpretation is correct and that the 60-day limit began to run when the census data was published by the federal government on August 12, 2021.¹

Interpretation of Statute

In Michigan, statutes are construed according to their plain and unambiguous meaning. *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65, 71-72; 894 NW2d 535 (2017) (“If the statute’s language is clear and unambiguous, then we assume that the Legislature intended its plain meaning and the statute is enforced as written.”). Any interpretation that would render a portion of a statute superfluous is improper. *Id.* (“This Court, as with all other courts, must give effect to every word, phrase, and clause in a statute, to avoid rendering any part of the statute nugatory or surplusage.”). And where a “statute does not define a word, [courts] consult dictionary definitions to determine the plain and ordinary meaning of the word.” *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 427; 751 NW2d 8 (2008).

The relevant statute here is MCL 46.401, *et seq.* That section provides:

“Within 60 days after the **publication** of the latest United States official decennial census figures, the county apportionment commission in each county of this state **shall** apportion the county into not less than 5 nor more than 21 county commissioner districts

¹ See <https://www.census.gov/newsroom/press-kits/2021/2020-census-redistricting.html>

as nearly of equal population as is practicable and within the limitations of section 2.” MCL 46.401.

As to the Michigan Secretary of State’s obligation, the statute says:

“The secretary of state **shall** furnish the latest official published figures to the county apportionment commissions forthwith upon this act taking effect, and **within 15 days after publication of subsequent United States official census figures.**” MCL 46.404.

The Bureau of Elections has said that it believes the “publication” date of the 2020 census data is September 30, 2021. The Bureau’s rationale is not entirely clear, though. It appears that the Bureau of Elections has taken the position that either (i) whatever date it chooses to furnish the census data to the counties constitutes the date of “publication” for purposes of MCL 46.401, or (ii) the date that the census bureau provides the data in “easier-to-use formats” constitutes the publication date, not the August 12, 2021 date on which the information was first made available to the public.² Neither position, however, is tenable.

The Michigan statute does not define “publication,” and neither does the relevant federal statute directing the U.S. Secretary of Commerce to provide the redistricting data to the states. 13 U.S.C. § 141. But both the plain meaning of the word “publish,” and its usage elsewhere in the same act give us the word’s meaning as the legislature used it here. First, to publish is to “make generally known” or “to disseminate to the public.”³ Second, the Bureau’s reading would render the language in MCL 46.404 superfluous. If the date of “furnishing” and “publication” are the same, then that section is meaningless and of no effect.

Taken together, section MCL 46.401 and 46.404 and the definition of “publish” demonstrate that the federal census bureau *publishes* the data (*i.e.*, makes it available to the public), and the Secretary of State then *furnishes* the published data to counties. The Secretary of State must act within 15 days of that publication, and the counties must act within 60 days of that publication.

Effects of Late Reapportionment

The Clerks are justified in their discomfort with the Bureau’s position here. If the county commissions miss their 60-day deadline, they lose the power to create their apportionment plans. MCL 46.407 says:

“If the apportionment commission has failed to submit a plan for its county within 60 days but not less than 30 days after the latest

² See <https://www.census.gov/newsroom/press-kits/2021/2020-census-redistricting.html> (distinguishing between August 12, 2021 release date and later, anticipated September 30, 2021 release date of same information in “easier-to-use format”).

³ <https://www.merriam-webster.com/dictionary/publish>

official published census figures are available or within such additional time as may be granted by the court of appeals for good cause shown on petition from the apportionment commission, **any registered voter of the county may submit a plan to the commission for approval. The commission shall choose from among those submitted to it** a plan meeting the requirements of the laws of this state and file such plan in the office of the county clerk as set forth in section 51 within 30 days after the deadline for the filing of the commission's own plan or any extension granted thereon."

The plain language of this section says that the commission loses the right to create its own apportionment plan and, instead, *must* choose one of the voter-created options submitted to it.

The Clerks and Counties' Options Now

According to the above-quoted section, it appears the Clerks and their respective apportionment commissions do have the ability to protect their right to create an apportionment plan. MCL 46.407 refers to the 60-day deadline "or within such additional time as may be granted by the court of appeals for good cause shown on petition from the apportionment commission." This means the counties' apportionment commissions have a right to petition the court of appeals for an extension of time. It would be very surprising if the court did not find the Bureau's unilateral delay of the necessary information to constitute good cause for an extension here.

A factually similar dispute was recently adjudicated by the United States Court of Appeals for the Sixth Circuit. The State of Ohio's constitution requires reapportionment of district seats based on U.S. census data by a certain date. Ohio sued the U.S. Secretary of Commerce for failing to deliver census data by the April 1, 2021 federal statutory deadline because it would cause Ohio to be unable to meet its constitutional mandate. *Ohio v Raimondo*, 848 Fed Appx 187, 188 (CA 6, 2021). Overturning the trial court, the Sixth Circuit found that the State had sufficient standing to sue the Secretary for this failure, since a statute provided the publishing date, and the State was injured by the Secretary's failure. *Id.*

Similarly here, Michigan statute requires the Michigan Secretary of State to furnish counties with the published census data within 15 days after publication. MCL 46.404. The Secretary's failure to do so constitutes a violation of that statute, which injures county apportionment commissions. The commissions would seemingly have standing to sue the Secretary on that basis, given the Sixth Circuit's rationale.

It appears the counties' apportionment commissions have two options if the Bureau refuses to comply with its statutory obligations: (i) petition the court of appeals for an extension of time to file a reapportionment plan, or (ii) sue the Bureau and Secretary of State for that failure.

We hope that the foregoing has been helpful. Should you have any further questions or wish to discuss the foregoing in more detail, please do not hesitate to contact us.

Very truly yours,



Jonathan E. Lauderbach

JEL/bjc
22182918



Bonnie Scheele <bscheele@gtcountymi.gov>

Re: Legal Opinion regarding the release of census information

1 message

Kit Tholen <ktholen@gtcountymi.gov>

Thu, Aug 26, 2021 at 12:02 PM

To: Bonnie Scheele <bscheele@gtcountymi.gov>, James Baker <jbaker@gtcountymi.gov>, Mike Steffes <msteffes@gtcountymi.gov>, Nate Alger <nalger@gtcountymi.gov>, Christopher Forsyth <cforsyth@gtcountymi.gov>

Hi Bonnie-

I agree with the opinion from Mr Lauderbach. Please let me know if you need assistance.

Kit

Get [Outlook for iOS](#)

From: Bonnie Scheele <bscheele@gtcountymi.gov>

Sent: Thursday, August 26, 2021 10:06:28 AM

To: James Baker <jbaker@gtcountymi.gov>; Mike Steffes <msteffes@gtcountymi.gov>; Nate Alger <nalger@gtcountymi.gov>; Christopher Forsyth <cforsyth@gtcountymi.gov>; Kit Tholen <ktholen@gtcountymi.gov>

Subject: Legal Opinion regarding the release of census information

Please see the attached legal opinion from Attorney Lauderbach regarding the release of the census data. There is a question on when the 60 day clock begins for the Apportionment Commission to complete the maps. If we miss the 60 day deadline, the public then submits the plans for redistricting.

We will be discussing this issue at our September 2nd Apportionment meeting.

***Please note my new email address:** bscheele@gtcountymi.gov

Bonnie Scheele, CMMC
Grand Traverse County Clerk
(231) 922-4760

Vital Records/Election Office
400 Boardman Ave., Ste 101
Traverse City, MI 49684

Circuit/Family Court Records Office
280 Washington St., Ste 206
Traverse City, MI 49684

